

### **REMARKS**

In the non-final Office Action dated May 30, 2008 (paper no. 20070528), the Examiner rejected claims 1-5, 37-41, and 44-45 under 35 U.S.C. § 103(a) over U.S. Patent Application Publication No. 2003/0110503 by Perkes ("Perkes"), U.S. Patent Application Publication No. 2002/0056123 by Liwerant et al. ("Liwerant"), and U.S. Patent No. 6,745,242 to Schick et al. ("Schick"); rejected claims 6 and 42 under 35 U.S.C. § 103(a) over Perkes, Liwerant, and U.S. Patent No. 6,854,010 to Christian et al. ("Christian"); rejected claim 7 under 35 U.S.C. § 103(a) over Perkes, Liwerant, and U.S. Patent No. 6,617,879 to Chung ("Chung"); rejected claims 8, 43, 46-49, and 51 under 35 U.S.C. § 103(a) over Perkes, Liwerant, and U.S. Patent Application Publication No. 2002/0152432 by Fleming ("Fleming"); and rejected claim 50 under 35 U.S.C. § 103(a) over Perkes, Liwerant, Fleming, and Christian.

In this response, applicants amend claims 3-5, 46, and 50-51; and present new claims 52-57. Claims 1-8 and 37-57 are pending in this application. For the reasons discussed in detail below, applicants respectfully submit that the pending claims are in condition for allowance.

#### **A. Applicants' Techniques**

Applicants' techniques are directed to distributing images from an image distribution server to client display systems. In some embodiments, the image distribution server receives communications from client display systems via a communications link, such as the Internet. When the server receives a communication from a client, the server records an indication that the client has communicated with the server via the communications link.

In some embodiments, when an image or a package of images is to be distributed by the server to a client, the server determines whether it has previously

recorded an indication that the client has communicated via the communications link. If an indication has previously been recorded, the server sends the image to the client via the communications link. If an indication has not previously been recorded, the server sends the image to the client via a mechanism other than the communications link. As one example, the image may be recorded on a physical computer-readable medium, such as a CD-ROM, and sent to the client via the postal service.

B. Perkes

Perkes describes a system for presenting media on demand. (Perkes, Abstract.) A viewer may view and/or schedule the delivery of broadcast segments. When a broadcaster is ready to deliver a broadcast segment to the user, the broadcaster initiates an intent to transmit notice. If the viewer is currently on line, the viewer is provided with information about the broadcast segment, and is given the option to accept or refuse download of the segment. (Perkes, ¶ [0078].)

C. Schick

Schick describes a method of monitoring network performance. A server sends pinging signals to multiple resource targets, and determines the status of the targets based on whether or not the targets respond to the pinging signals. (Schick, Abstract.) Schick's server may maintain records of the results of the pinging, including a heartbeat record, a status record, and an event record. Each of these records may include a timestamp indicating a time at which the record was obtained. (Schick, 4:38-67.)

D. Liwerant

Liwerant describes a system for sharing a video segment over a computer network. Liwerant may present a user with a web page form to collect information from the user in connection with a video segment, including payment information,

specifications such as resolution and/or image quality, and an additional copy of the files, such as a copy recorded on CD-ROM and sent to the user by the postal service.

E. Rejections under 35 U.S.C. § 103(a)

Claims 1-8 and 37-45 stand rejected under 35 U.S.C. § 103(a) over Perkes, Liwerant, and Schick, in some cases in combination with additional references. Applicants respectfully traverse these rejections.

Claims 1-8 are directed to determining how to send an image to a client based on the presence or absence of a previously recorded indication for the client. If a distribution server has previously recorded an indication that the client has communicated with the server via a communications link, such as the Internet, the server sends the image via the communications link. If no such indication has previously been recorded, the server sends the image via an alternative method, such as by recording the image on a physical computer-readable medium and sending it via the postal service. Claims 1-8 recite:

determining whether an indication has previously been recorded that the client system has communicated with the distribution system via the communications link;

when an indication has previously been recorded that the client system has communicated with the distribution system via the communications link, sending the image to the client system via the communications link; and

when an indication has not previously been recorded that the client system has communicated with the distribution system via the communications link, indicating to send the image to the client system via a mechanism other than the communications link.

The Examiner acknowledges that Perkes does not disclose "determining whether an indication has previously been recorded that the client system has communicated with the distribution system via a communications link." The Examiner cites Schick at

4:38-67 as disclosing this recited feature. In particular, the Examiner cites Schick's "identifier identified record as a heartbeat record, the timestamp indicates a time at which the record was obtained." (Office Action, May 30, 2008, p. 3-4.)

The cited portion of Schick describes several different pinging records that are maintained by Schick's server. Schick's server sends pinging signals to multiple resource targets to determine the status of the targets. Schick's server may maintain records of the results of the pinging, including a heartbeat record, a status record, and an event record. Each of these records may include a timestamp indicating the time at which the record was obtained. At most, however, Schick discloses maintaining a record of a communication between a server and a target. Schick fails to disclose determining how to send an image to a target based on the presence or absence of a record for the target. In particular, Schick fails to disclose:

when an indication has previously been recorded that the client system has communicated with the distribution system via the communications link, sending the image to the client system via the communications link; and

when an indication has not previously been recorded that the client system has communicated with the distribution system via the communications link, indicating to send the image to the client system via a mechanism other than the communications link,

as recited by claims 1-8. The other cited references also fail to disclose these recited features.

Claims 37-45 are directed to determining how to send a package of images to a client based on whether the client has recently communicated via a communications link. For example, if a client has recently communicated with a server via a communications link, such as the Internet, the server may send the package of images via the communications link. Otherwise, the server may send the package of image via

an alternative method, such as by recording the images on a physical computer-readable medium and sending it via the postal service. Claims 37-45 recite:

a component that determines, when a package of images is to be distributed to a client system, whether the package of images should be distributed to the client system via the communications link or via a mechanism other than the communications link based on whether a communication has recently been received via the communications link from the client system.

The Examiner cites Perkes at paragraphs [0078]-[0079] and [0125] as disclosing "a component that determines whether a package of images should be distributed to the client system via the communications link or the communication link based on when communications was received via the communication link from the client system." In particular, the Examiner indicates that Perkes teaches "the on/off line status of the viewers computer is determined by the master agent." (Office Action, May 30, 2008, p. 8.)

Applicants respectfully submit that the Examiner's citation to Perkes as disclosing "a component that determines whether a package of images should be distributed to the client system via the communications link or the communication link based on when communications was received via the communication link from the client system" is not the same as:

a component that determines, when a package of images is to be distributed to a client system, whether the package of images should be distributed to the client system via the communications link or via a mechanism other than the communications link based on whether a communication has recently been received via the communications link from the client system,

as recited by claims 37-45. Applicants' techniques determine which of multiple delivery mechanisms – e.g., a communications link or a mechanism other than the communications link – is to be used to distribute a package of images to the client. At

most, Perkes describes sending a broadcast segment to a viewer if the viewer accepts the segment; otherwise, the segment is not sent to the viewer. (Perkes, ¶ [0078].) Perkes fails to disclose determining which of multiple mechanisms is to be used to send a broadcast segment to the viewer.

Moreover, Perkes fails to disclose a determination that is "based on whether a communication has recently been received via the communications link from the client system," as recited by claims 37-45. At most, when a broadcast segment is to be downloaded to a viewer, Perkes determines the current status – on line or off line – of a viewer's computer. (Perkes, ¶ [0078], [0125].) If the viewer is currently on line, Perkes provides information associated with the broadcast segment to the viewer and allows the viewer to download the broadcast. Unlike applicants' techniques, Perkes offers no teaching or suggestion that a determination is made "based on whether a communication has recently been received via the communications link from the client system."

The Examiner acknowledges that Perkes does not disclose "sending the image to the client system via a mechanism other than the communications link," and relies on Liwerant at paragraph [0052] to cure this deficiency. In particular, the Examiner cites Liwerant's "resolution and/or image quality desired by the user of sender A's computer 10, and the provision of the file in some additional option form, such as recorded on CD-ROM and sent to the user of sender's computer 10 by postal service." (Office Action, May 30, 2008, p. 8.)

The Examiner's citation to Perkes as disclosing sending content via the Internet and to Liwerant as sending content via a CD-ROM does not satisfy the Examiner's burden. The Examiner has not cited a reference or combination of references that discloses determining which of multiple delivery mechanisms is to be used to send content. In particular, the Examiner has not cited a reference or combination of references that discloses:

a component that determines, when a package of images is to be distributed to a client system, whether the package of images should be distributed to the client system via the communications link or via a mechanism other than the communications link based on whether a communication has recently been received via the communications link from the client system,

as recited by claims 37-45. At most, Perkes describes sending a broadcast segment to a viewer if the viewer accepts the segment; otherwise, the segment is not sent to the viewer. (Perkes, ¶ [0078].) Perkes fails to disclose determining which of multiple mechanisms is to be used to send a broadcast segment to the viewer. At most, Liwerant describes sending an additional copy of content to a user by recording the content on a CD-ROM and sending it by the postal service. (Liwerant, ¶ [0052].) Liwerant fails to disclose determining which of multiple mechanisms is to be used to send the content to the user.

Claims 46-51 stand rejected under 35 U.S.C. § 103(a) over Perkes, Liwerant, and Fleming, in some cases in combination with additional references. Applicants respectfully traverse these rejections.

Claims 46-51 are directed to determining how to send an image to a client based on a recorded indication for the client. An indication is recorded for a client when heartbeat communications are received from the client over the Internet. Claims 46-51, as amended, recite "determining whether an image is to be sent to the client system via the Internet or via some other mechanism based on heartbeat communications received from the client system as indicated by the recorded indications of the receipt of heartbeat communications."

The Examiner cites Perkes at paragraph [0078] as disclosing "determining whether an image is to be sent to a client system via the Internet based on communications received from the client system as indicated by the recorded indications of the receipt of communications system." In particular, the Examiner

indicates that Perkes teaches "if the viewer [is] on line, the viewer is provided certain information about the broadcast segment (digital photos, video or MP3), and if the viewer [is] offline, broadcast Notification is stored for future notification." (Office Action, May 30, 2008, p. 17.)

Applicants respectfully submit that the Examiner's citation to Perkes as disclosing "determining whether an image is to be sent to a client system via the Internet based on communications received from the client system as indicated by the recorded indications of the receipt of communications system" is not the same as "determining whether an image is to be sent to the client system via the Internet or via some other mechanism based on heartbeat communications received from the client system as indicated by the recorded indications of the receipt of heartbeat communications," as recited by claims 46-51 (emphasis added). Applicants' techniques determine which of multiple delivery mechanisms – e.g., the Internet or another mechanism – is to be used to send an image to the client. As described above, at most, Perkes describes sending a broadcast segment to a viewer if the viewer accepts the segment; otherwise, the segment is not sent to the viewer. (Perkes, ¶ [0078].) Perkes fails to disclose determining which of multiple mechanisms is to be used to send a broadcast segment to the viewer.

Moreover, Perkes fails to disclose a determination that is based on "recorded indications," as recited by claims 46-51. At most, when a broadcast segment is to be downloaded to a viewer, Perkes determines the current status – on line or off line – of a viewer's computer. (Perkes, ¶ [0078].) If the viewer is currently on line, Perkes provides information associated with the broadcast segment to the viewer and allows the viewer to download the broadcast. Unlike applicants' techniques, Perkes offers no teaching or suggestion that a determination is made based on a "recorded indication."

The Examiner acknowledges that Perkes does not disclose "sending the image to the client system via a mechanism other tha[n] the communications link," and relies



on Liwerant at paragraph [0052] to cure this deficiency. In particular, the Examiner cites Liwerant's "resolution and/or image quality desired by the user of sender A's computer 10, and the provision of the file in some additional option form, such as recorded on CD-ROM and sent to the user of sender's computer 10 by postal service." (Office Action, May 30, 2008, p. 17.)

As discussed above, the Examiner's citation to Perkes as disclosing sending content via the Internet and to Liwerant as sending content via a CD-ROM does not satisfy the Examiner's burden. The Examiner has not cited a reference or combination of references that discloses determining which of multiple delivery mechanisms is to be used to send content. In particular, the Examiner has not cited a reference or combination of references that discloses "determining whether an image is to be sent to the client system via the Internet or via some other mechanism based on heartbeat communications received from the client system as indicated by the recorded indications of the receipt of heartbeat communications," as recited by claims 46-51. At most, Perkes describes sending a broadcast segment to a viewer if the viewer accepts the segment; otherwise, the segment is not sent to the viewer. (Perkes, ¶ [0078].) Perkes fails to disclose determining which of multiple mechanisms is to be used to send a broadcast segment to the viewer. At most, Liwerant describes sending an additional copy of content to a user by recording the content on a CD-ROM and sending it by the postal service. (Liwerant, ¶ [0052].) Liwerant fails to disclose determining which of multiple mechanisms is to be used to send the content to the user.

In view of the foregoing, applicants respectfully request that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 103(a).

F. New Claims

Applicants present new claims 52-57. Applicants respectfully submit that claims 52-54 are patentable over the cited references for at least the reason that each of these

claims depends from an independent claim discussed above. Claims 52-54 are patentable over the cited references for at least the additional and independent reason that these claims are directed to communications initiated by the client. Claims 52-53 recite "wherein the communication received from the client system is transmitted at the initiative of the client system." Claim 54 recites "wherein the heartbeat communications received from the client system are transmitted at the initiative of the client system."

None of the cited references discloses or suggests communications that are initiated by the client. For example, Schick and Perkes describe communications that are transmitted at the initiative of a server. Schick describes that its pinging signals are sent at the initiative of the server. (Schick, 4:11-23.) Perkes describes that its broadcast segment is initiated by a broadcaster's intent to transmit notice. (Perkes, ¶ [0078].) None of the cited references discloses or suggests "wherein the [heartbeat] communication[s] received from the client system is [or are] transmitted at the initiative of the client system," as recited by claims 52-54.

In addition, applicants respectfully submit that claims 55-57 are patentable over the cited references for at least the reason that these claims include the following features, discussed above in reference to claims 1-8:

- determining whether an indication has previously been recorded that the client system has communicated with the distribution system via the communications link;

- when an indication has previously been recorded that the client system has communicated with the distribution system via the communications link, sending the image to the client system via the communications link; and

- when an indication has not previously been recorded that the client system has communicated with the distribution system via the communications link, indicating to send the image to the client system via a mechanism other than the communications link.

Claim 56 is patentable over the cited references for at least the additional and independent reason that this claim includes the feature "wherein the communication received from the client system is transmitted at the initiative of the client system," discussed above in reference to new claims 52-54.


G. Conclusion

In view of the above amendment, applicants believe the pending application is in condition for allowance and respectfully request a prompt Notice of Allowance.

Please charge any deficiency in fees or credit any overpayment to our Deposit Account No. 50-0665, under Order No. 320529154US from which the undersigned is authorized to draw.

Respectfully submitted,  
Perkins Coie LLP

Date: December 1, 2008

  
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